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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/454,164 | 11/17/1999 | Michael J. Munroe | 5922-53642 | 3438 |

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EXAMINER

PHAN, HANH

ART UNIT

PAPER NUMBER

2633

DATE MAILED: 05/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

| | |
|-------------------------------|------------------------------|
| Application No. 09/454,164 | Applicant(s) MUNROE et al |
| Examiner Hanh Phan | Art Unit 2633 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Nov 17, 1999

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

4) Claim(s) 1-10, 14-17, and 19-28 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 1-4 and 19-21 is/are allowed.

6) Claim(s) 5-10, 14-17, and 22-28 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) Other: _____

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DETAILED ACTION

1. This is responsive to the Amendment filed on 02/20/2002.
2. In claim 23 the phrase "a decoder" should be changed to --an encoder--.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 5-10, 14-17, and 22-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No: 6,313,771 (Munroe et al). Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between the patented claims and claims 5-10, 14-17, and 22-28 in this application is the first-level code is to identify a first user station and the second-level code is to identify a second user station. However, it would have been obvious to obtain the first-level code to identify a first user station and the second-level

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code to identify a second user station in order to distribute the signals to many users in the passive optical network.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 5-10, 14-17, and 22-28 are rejected under 35U.S.C.103(a) as being unpatentable over Mossberg et al (U.S. Patent number 6,314,220).

Regarding claims 5, 16, and 23, referring to Figure 1, Mossberg teaches a central station for an optical network, comprising: a transmitter (10, 15a, 16a) coupled to produce an optical data signal from an electrical data signal (col. 3, lines 34-67, col. 4, lines 1-27), and an encoder (15c, 16c, 19, 20)(Fig. 1) coupled to apply a composite code to the optical data signal, the composite code having a first level code (15e) and a second level code (16e), wherein the first-level code (15e) is to identify a first destination (15j) and the second-level code (16e) is to identify a second destination (16j) (Fig. 1). Although he does not specifically teach that 15j and 16j are user stations, it would have been obvious to send data to user stations. Although he does not specifically teach that the first and second codes are used to identify the first and second user stations, it is well known to send an address with a signal to identify where the signal is to be sent.

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Regarding claims 6, 17, and 24, Mossberg teaches wherein the composite code to be applied by the encoder is a temporal code (Fig. 1, col. 2, lines 53-58).

Regarding claims 7 and 25, Mossberg teaches wherein the composite code is an address code designate an intended destination for data defined by the electrical data signal (Fig. 1).

Regarding claim 8, Mossberg teaches a multiplexing station for an optical network, comprising: a temporal address decoder (16g, 19a, 15g, 20a) coupled to receive a signal containing data coded according to a first downstream address code and a second downstream address code and to strip the first and second downstream address codes from the signal, wherein the first downstream address code is to designate a destination for a first portion of the data and the second downstream address code is to designate a destination for a second portion of the data (Fig. 1, col. 3, lines 34-67, col. 4, lines 1-27).

Regarding claim 9, Mossberg teaches wherein the temporal address decoder is to strip an optical code from the signal (col. 4, lines 3-27).

Regarding claims 10 and 22, Mossberg teaches wherein the optical code is a composite code (Fig. 1).

Regarding claim 14, Mossberg teaches wherein the temporal address decoder comprises at least one fiber Bragg grating coupled to strip the code (Fig. 1, col. 4, lines 3-27).

Regarding claim 15, Mossberg teaches wherein further comprising an optical circulator coupled to direct the signal to at least one fiber Bragg grating (Fig. 1, col. 4, lines 3-27).

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Regarding claim 26, Mossberg teaches a multiplexing station for an optical network, comprising: a temporal address encoder (15c, 19, 16c, 20) coupled to encode an optical signal according to a first downstream address and a second downstream address, wherein the first downstream address is to designate a destination for a first portion of data carried by the optical signal and the second downstream address is to designate a destination for a second portion of data carried by the optical signal (Fig. 1, col. 3, lines 34-67, col. 4, lines 1-27).

Regarding claim 27, Mossberg teaches wherein the temporal address encoder includes at least one fiber Bragg grating to encode an optical signal (Fig. 1).

Regarding claim 28, Mossberg teaches wherein further comprising an optical circulator coupled to direct the optical signal to the at least one fiber Bragg grating (Fig. 1).

7. Claims 1-4 and 19-21 are allowed.

Response to Arguments

8. Applicant's arguments with respect to claims 1-10, 14-17, and 19-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh Phan whose telephone number is (703)306-5840.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan, can be reached on (703)305-4729. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-4700.

Leslie Pascal
LESLIE PASCAL
PRIMARY EXAMINER